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## Answering the key questions in the Plaxico Burress case

### Story Highlights

Burress is charged with criminal possession of a weapon in the second degree

If convicted, Burress would face a minimum of three and a half years in prison

The testimony of Antonio Pierce and Derrick Ward will likely prove crucial

*SI.com legal analyst Michael McCann answers the key questions concerning Plaxico Burress, who hours ago turned himself in to police on gun charges related to the self-inflicted gunshot wound he suffered early Saturday morning at New York City's Latin Quarter nightclub.*

### 1) What charges does Burress face in New York?

Burress is facing charges for criminal possession of a weapon in the second degree, a Class C felony which prohibits the possession of a loaded gun without a proper license outside the home or place of business. If convicted, Burress would face a minimum of three and a half years and a maximum of 15 years in prison. He is expected to plead not guilty and will be represented by noted trial attorney **Benjamin Branfman**.

### 2) Why would someone be charged for accidentally shooting himself?

The purpose of the charge is not to punish for Burress for the alleged accident, but rather to punish him for allegedly carrying a loaded gun without a valid license. His intent, purpose and justification for carrying the gun are thus irrelevant. New York has one of the nation's least-forgiving gun laws, and this particular provision was enacted in 2006. Indeed, had the same alleged incident took place prior to 2006, prosecutors would have needed to show that Burress had the intent to use the gun unlawfully against another person. Unfortunately for Burress, the new law eliminates that intent requirement, making mere possession a felony.

### 3) Since this New York law is unusually strict and reflects a recent change, couldn't Burress argue that he simply didn't know the law?

Failing to know the law is generally not a defense in criminal law. The presumption is that a person in a jurisdiction knows the jurisdiction's criminal laws, even if those laws are relatively unusual or recently changed. Burress will need a better defense.

### 4) So what other defenses does Burress have?

It appears that Burress has a difficult road ahead of him, but not necessarily an impossible road. As New York criminal defense attorney and former Manhattan prosecutor **Jeremy Saland** of Crotty Saland, LLP tells SI.com, state prosecutors need to establish Burress' actual possession of the gun, and need to do so beyond a reasonable doubt.

"It is the facts that should dictate charges, not mere speculation," Saland says. "Since the New York Police Department did not recover the gun from Burress in Manhattan and it does not appear as if Burress made a statement, prosecutors must establish through other means that Burress possessed the gun in New York County. While there are multiple ways to do so,

witnesses, including his teammates, or a video bearing out the incident and the firearm could satisfy this element." The testimony of teammate **Antonio Pierce** (who was at the nightclub with Burress) should thus prove crucial in this case.

#### **5) How can Burress plead not guilty, given the apparent evidence?**

The only way, as I see it, would be to argue what Saland suggested: Since the NYPD didn't recover the gun from Burress, and since he has not (to my knowledge) admitted that it was his gun that led to his injury, he could argue that he did not have possession of the gun when it was discharged, or at any other point. This would seem to require that someone else shot him, or that the nature of his possession fails to satisfy the requisite legal standard for possession under New York law.

#### **6) How likely is it that Burress will end up serving jail time as a result of this incident?**

Assuming that the criminal possession of a weapon in the second degree charge against him is proven --and based on the purported information about what happened at the nightclub, his prospects for a defense seem limited -- a judge will have to sentence Burress to at least three and a half years in prison under mandatory sentencing. If Burress is cooperative and apologetic, prosecutors could elect to seek lighter charges against him. If he fights the charges and can somehow offer reasonable doubt that he wasn't in possession of the gun, then he would be vindicated. Bottom line: If the purported information is correct, Burress is poised to serve time.

#### **7) Could Pierce be exposed to any criminal liability?**

There are reports that Pierce may have attempted to hide the gun after its discharge. If those reports are accurate, Pierce could be charged with several crimes and may be exposed to more serious criminal penalties than Burress. Assuming he took possession of the gun after the shooting, Pierce could face the same charge as Burress likely faces: criminal possession of a weapon in the second degree. He could also face criminal facilitation, which involves a person aiding in the commission of a crime, and obstruction of government administration, which refers to efforts to impede the processes of legal justice.

#### **8) What will Roger Goodell do?**

The NFL personnel conduct policy, which came into effect in 2007, empowers the commissioner to regulate the behavior of all persons associated with the league. These persons are obligated to avoid any conduct detrimental to the integrity of, and public confidence in, the NFL. Importantly, violation of the policy need not entail a crime or even a civil offense; all that is required is "detrimental" conduct as interpreted by the commissioner, who acts as the policy's judge and jury.

Although he is not obligated under the policy to wait for a criminal conviction of Burress (and/or Pierce), Goodell will probably not take action until there is a conviction or its equivalent, such as a plea of no contest or a plea to a lesser charge.

#### **9) Could the Giants terminate Burress' contract?**

Yes. Of all the major pro sports leagues, the NFL offers teams the most flexibility in releasing players, particularly given that most of an NFL player's contract is non-guaranteed income. Teams can cut players for performance reasons, business reasons and also if a player misbehaves: Paragraph 11 of the standard player contract notes that a team may terminate a player's contract if the player has "engaged in personal conduct reasonably judged by Club to adversely affect or reflect on Club." Although Burress' contract is not publicly available, it likely contains this clause or very similar language. The Giants would of course have to weigh the salary cap implications of cutting Burress, but their financial commitment to him would end upon his release.

#### **10) Could the Giants be in hot water for not reporting this?**

Generally, employers have no legal obligation to report possible criminal activities committed by an employee outside the scope of that employee's employment. If the Giants failed to comply with any prosecutors' requests, however, then team officials could be subject to a charge of obstruction of government administration, which refers to efforts to impede the processes of legal justice. At this point, however, it seems unlikely that the Giants will get in any legal trouble.


On the other hand, if Goodell believes that Giants personnel failed to reveal information relevant to the enforcement of the league's personnel conduct policy, then it's possible that the team could face sanctions (e.g., a hefty fine, forfeiting of draft picks) under that same policy, as it governs all NFL employees and officials. The commissioner would determine the appropriateness of any sanction and what its terms should be. The sanction would not be subject to review, other than by Goodell himself.

*Michael McCann is a visiting law professor at Boston College Law School, a law professor at Vermont Law School and the*

*distinguished visiting Hall of Fame Professor of Law at Mississippi College School of Law.*

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